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**To:** <secretary@fmc.gov>  
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To: Mr. Bryant L. Van Brakle, Secretary  
Federal Maritime Commission  
Washington D.C

From: Bill McNerney, CEO  
Phoenix International Freight Services, Ltd  
Wood Dale, Illinois 60191

September 16th, 2004

Subject: NVOCC Petitions for Exemption from Tariff Filing

Dear Secretary Van Brakle,

Phoenix International Freight Services, and its NVOCC Division PIX Line is the largest privately owned, American based, International Freight Forwarder/Customs house Broker. This year we will move about 25,000 TEUs in our export trade and about 85,000 TEUs in our import trade. You may be familiar with my name as I have been actively working on the subject of abolishing mandatory tariff filing for NVOCCs since 1987. I testified on this subject in front of the Senate Hearings in 1996, and have made countless trips to Washington to meet with legislators and FMC Commissioners to discuss this subject. Obviously I think it is important.

I am aware of and have read all the petitions that are currently under study by the commission that deal with relieving the administrative burden on our industry and creating an environment that allows the marketplace to operate more effectively. To some extent, every one of these initiatives represents an improvement over the present system which all segments of the industry agree needs to be reformed. And that is why it was possible to get so many parties to sign on to these various petitions.

It would be nice for NVOCCs to be able to sign confidential service contracts with their customers, as the petition submitted by UPS requests. Phoenix, and some of its customers, would definitely derive benefit from such a change. But the problem is that 99% of our customers have no interest in signing service agreements with us or any other NVOCC. Their interests are better served by being able to nimbly select from a variety of service providers. Service contracts make it more cumbersome for them to shop like that, and really offer no benefit to either shipper or NVOCC for the vast majority of the shipping transactions that take place every day.

I have invited numerous commissioners to visit our office in Chicago to help them to understand how pricing agreements between NVOCCs and their customers are arrived at in the real world. Basically, the customers either call us, or meet with our sales representatives and agree on pricing, which is then recorded in our customer profiles. After those simple steps are complete, we file the rate in our FMC approved tariff

which NOBODY ever looks at again. It is the last step in the process that serves no purpose, costs us money to administer, and potentially exposes us to fines if we make mistakes, that we want to eliminate.

This writer believes that the petition submitted by the NCBFAA last year (P5-03) is the one that should be adopted by the commission. It goes beyond satisfying the legitimate need for some NVOCCs to occasionally negotiate confidential service contracts with their customers. What it does is address the real issue that there is absolutely no need for the FMC to monitor the pricing agreements between NVOCC and their customers. The free market will ensure that these prices are competitive, just as the market works in every other segment of our economy.

VOCCs alone enjoy the privilege of anti-trust immunity, and therefore it can be argued that they should be subject to oversight on pricing issues that would be unnecessary were it not for their unique status. But it is not just one letter that makes NVOCCs different from VOCCs. Anti-trust immunity is what makes us different.

I am weary of writing about and talking about this subject. The NCBFAA Petition is the one that is broadest and will best satisfy the needs of every segment of the shipping industry. Please adopt it.

Thank you,

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